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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951

No. 305

CITIES SERVICE COMPANY, and THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

*Petitioners,*

*v.*

J. HOWARD MCGRATH, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## REPLY BRIEF FOR PETITIONERS

Since the filing of the petition for certiorari herein, action has been taken by the Attorney General which emphasizes and increases the importance of this case, as one presenting issues likely to be crucial in thousands of other instances.

The widened vesting program referred to in the Petition (p. 7) as prospective has now been put into effect. By Vesting Orders dated September 27, filed October 2, 1951 (Vesting Orders Nos. 18521, 18519 and 18520; 16 F. R. 10097-10102), some thousands of bonds of various domestic issues, whose total value runs into millions, have

purportedly been vested. The circumstances are such as to make it clear that the instruments have not been seized or come into possession of the APC, for the vesting is of securities scheduled by General Ruling 5B (16 F. R. 539) which have not been deposited with the Federal Reserve Bank as required by the terms of that Ruling. See the Press Release of the Department of Justice, October 4, 1951, G. P. O. 85-50072; cf. N. Y. Times, Oct. 6, 1951, p. 24, col. 2. In the case of Vesting Order 18519, the bonds are purportedly vested as property of unknown persons, as to whom the Vesting Order found that there was "reasonable cause to believe" that they were residents of enemy countries and hence enemy nationals. In the case of Vesting Orders 18520 and 18521, the bonds are purportedly vested as property of unspecified Netherlands nationals. In view of these circumstances, along with the requirements of General Ruling 5B as to deposit, it is to be inferred that many, if not most, of the instruments are also physically located outside the United States. The determination of the issues present in the instant case has therefore become of fresh importance to great numbers of individuals and institutions directly affected by these new vesting orders.

The Department of Justice Press Release states that, as a result of this purported vesting of securities, "the rights of holders of such securities have been nullified." (Compare the specious effort to distinguish *Bank of Jasper* v. *First National Bank*, 258 U. S. 112, in Respondent's Brief in Opposition, n. 6, p. 10, where Respondent seems to argue that the enforcement of such a vesting order does not involve a determination of the liability of obligors to holders, although the holders are deprived of their rights against the obligors.) In the face of the APC's claim that such sweeping consequences follow vesting, and in the light of existing law (see the Petition, pp. 11-16), the problem of obligors as to whether the vesting orders of this type are within the power of the APC is inescapably serious. The Petition gave a number of reasons why it is believed important for this Court to review the decision below—regardless

of how the case is ultimately determined. Those reasons the Respondent made no effort to counter, but only urged that on the merits the court below was right. Because these reasons are all the more pressing as a result of the vast amount of securities involved in the new vestings, we urge again that the petition for the writ of certiorari be granted.

Respectfully submitted,

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October 18, 1951